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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 2011-609

13 **MADONNA ROSE BAUTISTA MALINIS**  
824 Humphrey Place  
14 Chula Vista, CA 91911

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about March 25, 2010, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Madonna Rose  
24 Bautista Malinis (Respondent). On or about March 7, 2010, Madonna Rose Bautista Malinis  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. On July 7, 2010, Madonna Rose Bautista Malinis suffered a  
27 criminal conviction for driving under the influence of alcohol. The Board denied the application  
28 on August 17, 2010.

## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 ....

7 7. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate  
9 the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation  
13 furnished by the applicant or licensee.

14 8. Section 2761 of the Code states:

15 The board may take disciplinary action against a certified or licensed nurse or  
16 deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the  
18 following:

19 ....

20 (f) Conviction of a felony or of any offense substantially related to the  
21 qualifications, functions, and duties of a registered nurse, in which event the record of  
22 the conviction shall be conclusive evidence thereof.

23 ....

24 9. Section 2762 of the Code states:

25 In addition to other acts constituting unprofessional conduct within the meaning  
26 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
27 licensed under this chapter to do any of the following:

28 ....

(b) Use any controlled substance as defined in Division 10 (commencing with  
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

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1 (c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of  
3 this section, or the possession of, or falsification of a record pertaining to, the  
4 substances described in subdivision (a) of this section, in which event the record of  
5 the conviction is conclusive evidence thereof.

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**REGULATORY PROVISIONS**

10 10. California Code of Regulations, title 16, section 1444 states:

7 A conviction or act shall be considered to be substantially related to the  
8 qualifications, functions or duties of a registered nurse if to a substantial degree it  
9 evidences the present or potential unfitness of a registered nurse to practice in a  
10 manner consistent with the public health, safety, or welfare. Such convictions or acts  
11 shall include but not be limited to the following:

10 (a) Assaultive or abusive conduct including, but not limited to, those violations  
11 listed in subdivision (d) of Penal Code Section 11160.

12 (b) Failure to comply with any mandatory reporting requirements.

13 (c) Theft, dishonesty, fraud, or deceit.

14 (d) Any conviction or act subject to an order of registration pursuant to Section  
15 290 of the Penal Code.

15 11. California Code of Regulations, title 16, section 1445 states:

16 (a) When considering the denial of a license under Section 480 of the code,  
17 the board, in evaluating the rehabilitation of the applicant and his/her present  
18 eligibility for a license will consider the following criteria:

18 (1) The nature and severity of the act(s) or crime(s) under consideration as  
19 grounds for denial.

19 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
20 under consideration as grounds for denial which also could be considered as grounds  
21 for denial under Section 480 of the code.

21 (3) The time that has elapsed since commission of the act(s) or crime(s)  
22 referred to in subdivision (1) or (2).

23 (4) The extent to which the applicant has complied with any terms of parole,  
24 probation, restitution, or any other sanctions lawfully imposed against the applicant.

25 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(July 7, 2010 Criminal Conviction for DUI on April 10, 2010)**

12. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about July 7, 2010, in a criminal proceeding entitled *People of the State of California v. Madonna R. Malinis*, in San Diego County Superior Court, case number M107830, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration of .08 percent or higher, a misdemeanor. An additional count of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about July 7, 2010, Respondent was sentenced to five years summary probation, and ordered to complete a three-month First Conviction Program and a MADD victim impact seminar, comply with standard alcohol conditions, and pay fines, fees, and restitution in the amount of \$1,952.

c. The facts that led to the conviction were that on or about the early morning of April 10, 2010, a patrol officer with the San Diego Police Department stopped Respondent after she was observed driving into oncoming traffic in downtown San Diego. The officer activated his lights and siren and Respondent yielded after two blocks. Respondent had four passengers in the vehicle. The officer noted an odor of an alcoholic beverage on Respondent's breath, her speech was slurred, and her eyes were bloodshot, watery and exhibited signs of nystagmus. Respondent admitted she had been drinking. Respondent agreed to submit to field sobriety tests but could not complete them as instructed and demonstrated by the officer. Respondent agreed to a preliminary alcohol screening (PAS) test, which registered readings of .158 and .145 percent blood alcohol concentration (BAC). Respondent was arrested for driving under the influence of alcohol. She provided two additional samples into an Intoxilyzer which registered readings of .13 and .14 percent BAC.

1                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

2                                   **(Unprofessional Conduct - Dangerous Use of Alcohol)**

3           13. Respondent's application is subject to denial under sections 480, subdivision  
4 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about April 10, 2010, Respondent  
5 used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, her  
6 passengers, and the public when she operated a motor vehicle while intoxicated, as detailed in  
7 paragraph 12, above.

8                                   **THIRD CAUSE FOR DENIAL OF APPLICATION**

9                                   **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**


10          14. Respondent's application is subject to denial under sections 480, subdivision  
11 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about July 7, 2010, Respondent was  
12 convicted of a criminal offense involving the consumption of alcohol as detailed in paragraph 12,  
13 above.

14                                   **PRAYER**

15          WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Registered Nursing issue a decision:

- 17          1. Denying the application of Madonna Rose Bautista Malinis for a Registered Nurse  
18 License;  
19          2. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: 1-11-2011

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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